

# HOUSE BILL No. 1238

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 25-26-13.

**Synopsis:** Dispensing drugs by pharmacies. Imposes a duty on a pharmacy to fill a contraceptive prescription drug or device in stock in a timely manner. Requires a pharmacy to take specified steps if the pharmacy does not have: (1) a contraceptive prescription drug or device; or (2) an over-the-counter contraceptive; in stock. Requires a pharmacy to ensure that the pharmacy's customers are not intimidated, threatened, or harassed in the delivery of services. Allows a person to file a complaint with the board of pharmacy or commence a civil action for a violation by a pharmacy. Requires the board of pharmacy to investigate a complaint and determine whether a violation has occurred. Allows the attorney general to file a civil action for a violation by a pharmacy, and sets forth the maximum civil penalties that may be awarded by the court.

**Effective:** July 1, 2009.

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## Summers

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January 12, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1238

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 25-26-13-16 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) A pharmacist  
3       shall exercise ~~his~~ **the pharmacist's** professional judgment in the best  
4       interest of the patient's health when engaging in the practice of  
5       pharmacy.

6       (b) A pharmacist has a duty to honor all prescriptions from a  
7       practitioner or from a physician, podiatrist, dentist, or veterinarian  
8       licensed under the laws of another state. Before honoring a  
9       prescription, the pharmacist shall take reasonable steps to determine  
10      whether the prescription has been issued in compliance with the laws  
11      of the state where it originated. The pharmacist is immune from  
12      criminal prosecution or civil liability if ~~he~~, **the pharmacist**, in good  
13      faith, refuses to honor a prescription because, in ~~his~~ **the pharmacist's**  
14      professional judgment, the honoring of the prescription would:

- 15           (1) be contrary to law;  
16           (2) be against the best interest of the patient;  
17           (3) aid or abet an addiction or habit; or



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(4) be contrary to the health and safety of the patient.

(c) **A pharmacy has a duty to dispense any prescribed contraceptive drug or device that a pharmacy has in stock in a timely manner and consistent with the pharmacy's normal time frame for filling a prescription. However, a pharmacy is immune from criminal prosecution or civil liability if the pharmacy, in good faith, refuses to honor a contraceptive prescription because the honoring of the prescription would result in a situation described in subsection (b)(1) through (b)(4).**

(d) **If a pharmacy does not have a prescribed contraceptive drug or device in stock, the pharmacy shall offer to do the following for the customer:**

**(1) Obtain the drug or device under the pharmacy's standard procedures for expedited ordering of a prescription drug or device that the pharmacy does not have in stock, and notify the customer when the pharmacy obtains the prescription drug or device.**

**(2) Locate the closest pharmacy or a pharmacy of the customer's choice that has the drug or device in stock, transfer the customer's prescription to that pharmacy under the pharmacy's standard procedures for transferring a prescription, and refer the customer to the pharmacy that has the drug or device in stock.**

**The pharmacy shall return the prescription order to the customer upon the customer's request at any time before dispensing the drug or device. The pharmacy shall perform the customer's choice of action under subdivision (1) or (2) in a timely fashion.**

SECTION 2. IC 25-26-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) To be eligible for issuance of a pharmacy permit, an applicant must show to the satisfaction of the board that:

**(1) Persons at the location will engage in the bona fide practice of pharmacy and the pharmacy will not intimidate, threaten, or harass the pharmacy's customers in the delivery of services.** The application must show the number of hours each week, if any, that the pharmacy will be open to the general public.

**(2) The pharmacy will maintain a sufficient stock of emergency and frequently prescribed drugs and devices as to adequately serve and protect the public health.**

**(3) Except as provided in section 19 of this chapter, a registered pharmacist will be in personal attendance and on duty in the licensed premises at all times when the practice of pharmacy is**

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being conducted and that the pharmacist will be responsible for the lawful conduct of the pharmacy.

(4) One (1) pharmacist will have not more than four (4) certified pharmacy technicians or pharmacy technicians in training certified under IC 25-26-19 under the pharmacist's immediate and personal supervision at any time. As used in this ~~clause~~, **subdivision**, "immediate and personal supervision" means within reasonable visual and vocal distance of the pharmacist.

(5) The pharmacy will be located separate and apart from any area containing merchandise not offered for sale under the pharmacy permit. The pharmacy will:

(A) be stationary;

(B) be sufficiently secure, either through electronic or physical means, or a combination of both, to protect the products contained in the pharmacy and to detect and deter entry during those times when the pharmacy is closed;

(C) be well lighted and ventilated with clean and sanitary surroundings;

(D) be equipped with a sink with hot and cold running water or some means for heating water, a proper sewage outlet, and refrigeration;

(E) have a prescription filling area of sufficient size to permit the practice of pharmacy as practiced at that particular pharmacy; and

(F) have such additional fixtures, facilities, and equipment as the board requires to enable it to operate properly as a pharmacy in compliance with federal and state laws and regulations governing pharmacies.

~~A pharmacy licensed under IC 25-26-10 (before its repeal on July 1, 1977) on June 30, 1977, must comply with the provisions of this clause before December 31, 1982, unless for good cause shown the board grants a waiver or otherwise exempts it.~~

(b) Prior to opening a pharmacy after receipt of a pharmacy permit, the permit holder shall submit the premises to a qualifying inspection by a representative of the board and shall present a physical inventory of the drug and all other items in the inventory on the premises.

(c) At all times, the wholesale value of the drug inventory on the licensed items must be at least ten percent (10%) of the wholesale value of the items in the licensed area.

**(d) A pharmacy shall ensure that the pharmacy does not intimidate, threaten, or harass the pharmacy's customers in the delivery of services.**

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SECTION 3. IC 25-26-13-24.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 24.5. (a) As used in this section, "contraceptive" means a drug or device that has been approved by the federal Food and Drug Administration to prevent pregnancy.**

**(b) Except as provided in subsection (c), if a customer requests an over-the-counter contraceptive that a pharmacy does not have in stock, the pharmacy shall offer to do the following for the customer:**

**(1) Obtain the contraceptive under the pharmacy's standard procedures for expedited ordering of an over-the-counter drug or device that the pharmacy does not have in stock, and notify the customer when the pharmacy obtains the contraceptive.**

**(2) Locate the closest pharmacy, or a pharmacy of the customer's choice, that has the contraceptive in stock and refer the customer to the pharmacy.**

**(c) A pharmacy is not required to special order a specific brand of over-the-counter contraceptive for a customer unless the customer had an adverse drug reaction to the brand the pharmacy has in stock.**

SECTION 4. IC 25-26-13-28.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 28.5. (a) A person that believes that a violation of section 16(c), 16(d), or 24.5 of this chapter has occurred may do the following:**

**(1) File a complaint with the board.**

**(2) Commence a civil action seeking damages, court costs, and reasonable attorney's fees and expert witnesses fees.**

**If a court finds that a violation of any of these sections occurred, the plaintiff may choose to collect statutory damages of five thousand dollars (\$5,000) per violation instead of actual compensatory damages.**

**(b) The board shall investigate a complaint filed under subsection (a) and determine, not later than thirty (30) business days after the date the complaint is filed with the board, whether a violation has occurred. Upon a hearing under IC 4-21.5-3, the board may do the following if the board determines that a violation has occurred:**

**(1) Impose a fine of at least twenty-five dollars (\$25).**

**(2) Limit a pharmacy's permit issued under this chapter.**

**(3) Revoke a pharmacy's permit issued under this chapter.**

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1       (c) If the attorney general has reasonable cause to believe that  
2 a person has been injured by a violation of section 16(c), 16(d), or  
3 24.5 of this chapter, the attorney general may commence a civil  
4 action in the name of the state of Indiana, as parens patriae on  
5 behalf of persons residing in Indiana. A court may award  
6 appropriate relief, including compensatory damages and civil  
7 penalties in the following amounts:

8           (1) Not more than five thousand dollars (\$5,000) for a first  
9 violation.

10          (2) Not more than ten thousand dollars (\$10,000) for a second  
11 or subsequent violation.

12       SECTION 5. [EFFECTIVE JULY 1, 2009] This act applies only to  
13 violations committed after June 30, 2009.

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